

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 108/2013

In the matter between:

JABULANI ZULU AND 389 OTHERS

Appellants

and

eTHEKWINI MUNICIPALITY

First Respondent

MINISTER OF POLICE

Second Respondent

**MEC FOR HUMAN SETTLEMENTS
AND PUBLIC WORKS OF THE
PROVINCE OF KWAZULU-NATAL**

Third Respondent

PRACTICE DIRECTION: SHORT NOTE

[A] The names of the parties and the case number

As above.

[B] The nature of the proceedings

An appeal against a decision of the High Court refusing the application made by the appellants for leave to intervene.

[C] The issues that will be argued, clearly and succinctly stated

It will be argued that the High Court did not misdirect itself in refusing the application by the appellants for leave to intervene.

[D] Portions of the record that are necessary for the determination of the matter

Volume 1: pages 1 - 20;

Volume 2: pages 1 to 110;

Volume 3: pages 111 to 153.

The portion of the record relating to the proceedings in the Constitutional Court (which as far as the applicant is aware) has not as yet been indexed or paginated by the appellants.

[E] An estimate of the duration of the argument

Approximately three hours.

[F] **Summary of the argument**

1. The respondent (“the MEC”) secured the grant of a *rule nisi*:
 - 1.1. authorising the eThekweni Municipality (“the Municipality”) and the Minister of Police (“the Minister”) to prevent the unlawful invasion of the MEC’s properties;
 - 1.2. interdicting and restraining any persons from invading any of the properties and/or undertaking the construction of any structures and/or the placing of any material upon the properties;
2. The appellants applied for leave to intervene contending that they were in occupation of one of the properties and in particular the Lamontville Property on which the Madlala Village was established and that the Order

would result in their homes being demolished and the removal of their assets.

3. The MEC and the Minister argued:
 - 3.1. that the Order was directed at preventing the invasion of the properties *subsequent* to the date of the grant thereof;
 - 3.2. the Order did not justify the eviction of any persons (including the Lamontville occupiers) who were admittedly in occupation of the Lamontville Property prior to the date of the grant thereof;
4. The appellants had in any event instituted separate legal proceedings for an Order restoring them to their occupation of the Lamontville Property.

5. It was argued that the appellants failed to establish a direct and substantial and/or a legal interest in the subject matter of the litigation and that their application for leave to intervene was accordingly misconceived.

6. It is submitted that the High Court did not misdirect itself in any respect in refusing the application for leave to intervene in that any rights which the appellants seek to assert to occupy the Lamontville Property will be determined in their pending application in which they seek to be restored to occupation thereof.

[G] A list of those authorities to which particular reference will be made

1. **Henri Viljoen (Pty) Ltd v Awerbuch Bros** 1953 (2) SA 151 (O) at 167 and 168 – 170

2. **United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd** 1972 (4) SA 409 (C) at 416A and 416B

3. **Government of the Republic of South Africa and Others v Grootboom** 2001 (1) SA 48 CC at [92] per Yacoob, J.

4. **Groengras Eiendomme (Proprietary) Limited and Other v Elandsfontein Unlawful Occupants and Others** 2002 (1) SA 125 T at [28]
5. **The City of Cape Town v Unlawful Occupiers, Erf 1800, Capricorn (Vrygrond Development) and Others** 2003 (6) SA 140 C at 151 I - J
6. **President of the Republic of South Africa and Another v Modderklip Boerdery (Proprietary) Limited (Agri SA and Others amici curiae)** 2005 (5) SA 3 CC at [43], [45], [46] and [49]

**V I GAJOO SC
F ABRAHAM**

**CHAMBERS
DURBAN**

24 DECEMBER 2013